



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 20 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN THE MATTER OF:

H&S Performance, LLC
4160 S. River Rd.
St. George, UT 84790

ATTENTION: Casey W. Shirts, Registered Agent

Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (EPA) hereby requires H&S Performance, LLC (H&S or "you") to submit certain information as part of an EPA investigation to determine H&S's compliance with sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the implemented motor vehicle regulations found at 40 C.F.R. Parts 85 and 86. Appendix A contains procedures regarding confidential business information, Appendix B specifies the information that you must submit, Appendix C provides instructions for your response to this request, Appendix D provides definitions, and Appendix E provides a sample format for your response to certain requests.

We issue this Request for Information under section 208(a) of the Act, 42 U.S.C. § 7542(a). Under section 208(a), EPA may require any person who is subject to the motor vehicle emission and fuel requirements of the Act to perform tests and provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The enclosures to this letter specify the information that you must submit, and provides instructions and definitions for responding to this request. You must send two copies of your response to this request within 30 calendar days of the date of this letter.

Failure to provide the required information may result in the initiation of a civil action under section 205(b) of the Act, 42 U.S.C. § 7524(b). Failure to respond or provide a complete response to this request may subject you to a civil penalty of up to \$37,500 per day. H&S must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

We may use any information submitted in response to this request in an administrative, civil, or criminal action.

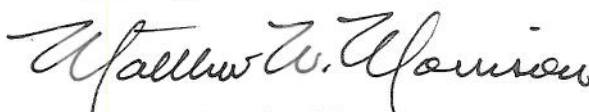
You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this request, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). EPA may, without further notice, provide the public with any information not subject to a CBI claim. You must specify the page, paragraph, and sentence when identifying the information subject to your claim. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims.

Please submit all requested information via overnight mail or courier service to the following address:

Christopher A. Thompson
Air Enforcement Division
EPA Office of Civil Enforcement
Ariel Rios Building
Room 1111C
1200 Pennsylvania Ave., NW
Washington, DC 20004

Any questions concerning this Request for Information should be directed to Mr. Thompson at (202) 564-3313 or thompson.christopher@epa.gov.

Sincerely,


✓ Phillip A. Brooks, Director
Air Enforcement Division

Enclosures

Appendix A

Confidential Business Information

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Request for Information for any business information entitled to confidential treatment under section 208(c) of the Act, 42 U.S.C. § 7542(c), and 40 C.F.R. Part 2, Subpart B. Under section 208(c), you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in section 208(c), and 40 C.F.R. Part 2, Subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this Request for Information as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Request for Information. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment is set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e); (2) you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; (3) the information is not and has not been reasonably obtainable by legitimate means without your consent; and (4) the disclosure of the information is likely to cause substantial harm to your business’s competitive edge. 40 C.F.R. § 2.208 (a)-(d). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this Request for Information, in accordance with 40 C.F.R. § 2.204(e)(4), EPA requests that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential

treatment? Specify by page, paragraph, and sentence when identifying the information subject to your claim.

2. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Are there means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish answers to the above questions concurrent with your response to this Request for Information if you have claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Under 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely answers as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your answers to:

Christopher A. Thompson
Air Enforcement Division
EPA Office of Civil Enforcement
Ariel Rios Building
Room 1111C
1200 Pennsylvania Ave., NW
Washington, DC 20004

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your answers may be regarded by EPA as entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent of and by means of the procedures set forth in section 208(c) of the Act and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your answers as a waiver of that claim, and the information may be made available to the public without further notice to you.

Appendix B
Request for Information

H&S must submit the following information to the United States Environmental Protection Agency under section 208 of the CAA, 42 U.S.C. § 7542, regarding the sale or offering for sale of certain parts and products.

1. Identify each motor vehicle component, device, or part (collectively "component") installed, sold, offered for sale, or manufactured by H&S during the period of January 1, 2010, to the date of this letter that changes, affects, or simulates the operation of a motor vehicle's diesel particulate filter system (DPF), or any other sensors or signals related to the DPF system.

In addition, identify each component installed, sold, offered for sale, or manufactured by H&S during the period of January 1, 2010, to the date of this letter, whose effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or an element of design intended to control emissions.

The identified components from this Question should be for the following types of vehicles:

- Model year 2003 and later diesel motor vehicles that were originally designed and built by the vehicle manufacturer for use on public roads.

Examples of such components are listed and described on the following H&S websites (this is not an exhaustive list of the requested components):

- Mini Maxx With Pyrometer Connection
<http://www.hsperformance.com/store/chevy-gmc/2010/tuners-electronics/mini-maxx-with-pyrometer-connection.html>
- Ford 6.4 4" Downpipe-Back DPF Delete
<http://www.hsperformance.com/store/ford/ford-6-4l-4-downpipe-back-dpf-delete-w-muffler-no-bungs.html>
- Ford 6.7 4" DPF/CAT 2 pc Delete Kit
<http://www.hsperformance.com/store/ford/2011/exhaust/simple-dpf-delete/ford-6-7l-dpf-cat-2-pc-delete-kit-3-5-outlet-no-bungs.html>
- 2010-2011 Dodge 6.7 Turbo Back 5" DPF Delete with Muffler
<http://www.hsperformance.com/store/dodge/2011/350hp-pickup/exhaust/turbo-back/2010-dodge-6-7l-turbo-back-5-dpf-delete-with-muffler.html>
- 2007-2011 H&S Maxx Flow Intake Manifold for Dodge 6.7 Cummins
<http://www.hsperformance.com/store/dodge/2011/350hp-pickup/intake-manifolds/intake-manifold-for-dodge-cummins-6-7l-2007-2010-2009-2010.html>

Be advised that this request pertains to all components described herein regardless of any claims made by H&S that a particular component is designed for use in closed course racing and is not intended for any other use, or other similar claims.

2. For each component identified in response to Question 1:
- a. State the component number and identifying name, and specify the vehicle applications by make, model, and year. The list of components provided by H&S must be organized by the following categories: applicable vehicle manufacturer, vehicle model, vehicle year, component name, and component number as shown in Appendix E.
 - b. Describe the function of the component, what it does, and how it operates.
 - c. Provide copies of all documentation for each component, including, but not limited to, technical specifications, installation and operating instructions, warranty information, and the information sheet that is distributed to consumers.
 - d. Identify by name all websites, magazines, trade publications, and any other media in which H&S advertised the component at any time since January 1, 2010. Provide copies of these advertisements.
 - e. State the quantity of each component that was manufactured by or for H&S during each year from January 1, 2010, through the date of this letter and identify the location(s) where the components were manufactured.
 - f. State the quantity of each component that was sold by H&S to consumers with shipping addresses in the United States during each year from January 1, 2010, through the date of this letter. Separately state the quantity sold to consumers in California and the quantity sold to consumers in the remaining 49 states and territories.
 - g. Provide copies of receipts for the total quantity of each component sold by H&S to consumers with shipping addresses in the United States during each year from January 1, 2010, through the date of this letter. Separate the receipts for components sold to consumers in California from the receipts for components sold to consumers in the remaining 49 states and territories.
 - h. State the quantity of each component that was sold or offered for sale by H&S to wholesalers, distributors, or authorized dealers during each year from January 1, 2010, through the date of this letter.
 - i. Provide copies of invoices or receipts for each component sold by H&S to all wholesalers, distributors, or authorized dealers during each year from January 1, 2010, through the date of this letter.
 - j. Identify the name, address, contact person, and phone number of each wholesaler, distributor, and authorized dealer for which H&S provides an invoice or receipt in response to Question 2.i. For each entity identified, also identify the brand name under which each component is or has been marketed.

3. For each component identified in response to Question 1, state whether any tests have been conducted that measure the impact of the component on motor vehicle air pollutant emissions, or that measure the impact of the component on a vehicle's emission control devices or elements of design. For each such test, provide a description of the test (including identification of the component and vehicle, and the test protocol), specify the date and location of the test, specify who conducted the test, and provide a copy of the test results.
4. Provide the name and address of each location where any of the components identified in response to Question 1 have been or currently are being stored or offered for sale by H&S.
5. Provide a list of all persons (see definitions in Appendix D) that are affiliated with H&S. Describe the business relationship with each person.
6. Provide a copy of H&S's or any affiliate's certificate of good standing, articles of incorporation, by-laws, and partnership or membership agreements, as applicable.
7. Provide a list of all the members of H&S.
8. Identify each person responsible for responding to this Request for Information, including his or her title, and the request(s) to which he or she responded.

Appendix E
SAMPLE FORMAT FOR RESPONSE


Manufacturer	Model	Year	Component Name	Component Number
Mfg. 1	Model A	2010	R55-LE Titanium Slip-On - Carbon End-cap	1520487
			R-77 Titanium/Titanium Slip-On - Carbon End-Cap	1520407
			R-77 Titanium/Carbon Slip-On - Carbon End-Cap	1520402
Mfg. 2	Model B	2007	TRC Titanium/Carbon Slip-On Dual - 1098	1515272
		2008	TRC Titanium/Carbon Slip-On Dual - 1098	1515272
		2009	TRC Titanium/Carbon Slip-On Dual - 1098	1515272
		2010	TRC Titanium/Carbon Slip-On Dual - 1098	1515272
	Model C	2007	TRC Titanium/Carbon Slip-On Dual - 1198	1515272
		2009	TRC Titanium/Carbon Slip-On Dual - 1198	1515272
		2009	TRC Titanium/Carbon Slip-On Dual - 1198	1515272
		2010	TRC Titanium/Carbon Slip-On Dual - 1198	1515272
	Model D	2007	TRC Titanium/Carbon Slip-On Dual - 848	1515272
		2007	TRC Titanium/Carbon Slip-On Dual - 848	1515272
		2009	TRC Titanium/Carbon Slip-On Dual - 848	1515272
		2010	TRC Titanium/Carbon Slip-On Dual - 848	1515272
Mfg. 3	Model E	2004	RS-3 Stainless/Carbon Full System	1415052
			RS-3 Titanium/Carbon Full System	1415112
			RS-3 Titanium/Titanium Full System	1415117
			RS-3 Stainless/Stainless Full System	1415055
			RS-3 Stainless/Titanium Full System	1415057
			TRS Stainless/Carbon Full System	1415062

Certificate of Mailing

I, Tawanna Cathey, certify that I sent a Request for Information under the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Mr. Casey W. Shirts
H&S Performance, LLC
4160 S. River Rd.
St. George, UT 84790

on the 20th day of July 2011.


Tawanna Cathey, Secretary, U.S. EPA

Certified Mail Receipt Number: 70073020600150105232